OMAHA NATIONAL BANK
YATES PETROLEUM CORP.

IBLA 72-21 Decided June 21, 1973

Appeal from a decision by the New Mexico State Office, Bureau of Land Management, rejecting an application for a 10-year renewal of lease LC-049945(a).

Reversed.

Oil and Gas Lease: Renewals--Oil and Gas Leases: Twenty-year Leases--Oil and Gas Leases: Unit and Cooperative Agreements

> A 20-year oil and gas lease having a preferential right to successive 10-year renewals, which, while in a 10-year renewal term, is first committed to, and then eliminated from a unit agreement prior to the expiration of its term, so that it is not part of a unit at the end of its term, is entitled to another renewal.

APPEARANCES: A. J. Losee, Esq., of Losee and Carson, Artesia, New Mexico, for appellants.

OPINION BY MR. RITVO

The Omaha National Bank and the Yates Petroleum Corporation have appealed from a decision by the New Mexico State Office, BLM, dated June 9, 1971. That decision rejected appellants' request for a second 10-year renewal of the original 20-year oil and gas lease, and held that since the existing renewal lease had been committed to a unit agreement, that lease continued in effect so long as it was committed to the unit, and upon elimination from the unit it would be continued for the remainder of the original term of the renewal lease or for two years from the date of its elimination from the unit agreement, whichever period was longer, and so long thereafter as oil or gas was produced in paying quantities.

On December 29, 1938, oil and gas lease LC-049945(a) was issued to Helen M. Bowers for an original term of 20 years together with the preferential right to renew the lease for successive periods of

10 years, unless otherwise provided by law at the time of the expiration of such periods. As a result of approved relief for the period from July 29, 1944, to July 28, 1945, the term of the original lease was extended for one year or until December 28, 1959. A 10-year renewal lease was subsequently sought by Katherine Juliet Bowers, the executrix and sole heir of Helen M. Bowers, deceased, and the same was granted, effective December 1, 1959, for a period ending November 30, 1969. Thereafter the lease was assigned to Omaha National Bank. Yates Petroleum Corporation holds operating rights in the lease. On August 1, 1963, the lease was committed to the Pecos River Deep Unit Agreement No. 14-08-0001-8483. Because of partial termination effective December 10, 1968, the appellants' lease LC-049945(a), among others, was thereby eliminated from the unit agreement. On March 12, 1969, the New Mexico State Office issued a decision announcing the extension of the terms of the leases eliminated from the Pecos River Deep Unit Agreement, in accordance with 43 CFR 3127.5 (1969) (now 43 CFR 3107.5). As appellants' lease LC-049945(a) had a terminal date of November 30, 1969, the decision effectively extended the term of that lease to December 9, 1970, two years from the date of elimination of the lease from the unit agreement (the longer of the two options), and so long thereafter as oil or gas is produced in paying quantities.

The appeal is concerned with the interpretation of section 17 of the Mineral Leasing Act, as amended by P.L. 86-705, September 2, 1960, 30 U.S.C. § 226, para. (j) (1970), which provides in pertinent part:

> Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. * * * Any lease which shall be eliminated from any such approved or prescribed plan, or from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

This statutory language first appeared in the amendment to sec. 17(b) of the Mineral Leasing Act contained in sec. 5, Act of August 8, 1946, 60 Stat. 951.

A reference to some earlier provisions of the Mineral Leasing Act is helpful. As enacted in the Mineral Leasing Act of February 25, 1920, 41 Stat. 443, section 17 provided:

> * * * Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods.

The Act of July 3, 1930, 46 Stat. 1007, retained this language and added a proviso that any lease subject to a cooperative or unit plan of development approved by the Secretary shall continue in force beyond said period of 20-years until the termination of the plan. This section was reenacted with no important change in the Act of March 4, 1931, 46 Stat. 1523.

The Act of August 21, 1935, 49 Stat. 676, abolished permits, and provided for competitive bidding for leases on lands known or believed to contain oil or gas deposits and non-competitive leases for other lands. Leases were granted for five years and so long thereafter as oil or gas was produced in paying quantities. The Act of August 21, 1935, further provided that:

> Leases issued prior to the effective date of this amendatory Act shall continue in force and effect in accordance with the term of such leases and the laws under which issued. Provided, that any such lease that has become the subject of a cooperative or unit plan of development or operation * * * shall continue in force beyond said period of twenty years until the termination of such plan * * *

The State Office cited Texaco, Inc., 76 I.D. 196 (1969), as precedent for its decision. In Texaco the Department held that the holder of a 20-year oil and gas lease is not given by his lease a contractual right to a 10-year renewal which prevails over all other extensions of the Mineral Leasing Act, but the right of renewal is expressly made subject to other provisions of the law, and, in case of a lease subject to an approved unit agreement at the expiration of the initial lease term, the right to renewal is superseded by the statutory provision that such leases shall continue in force until the termination of the unit plan. The Department found crucial the proviso in the 1935 Act. It said its effect was to make it the sole method of extending a 20-year lease which was the subject of a unit agreement upon the expiration of its terms. It therefore concluded that a 20-year lease which is committed to a unit agreement at the expiration of the 20-year term is not entitled to a 10-year renewal but is continued in force and made coterminous with the unit of which it is a part.

Two recent decisions applied the rule of Texaco, Martin Yates III, 7 IBLA 261 (1972), and Anne Burnett Tandy, 7 IBLA 356 (1972). In each case the 20-year lease which had been renewed for one or more 10-year periods was committed to a unit agreement at the expiration of a 10-year renewal period.

Appellant contends that Texaco is incorrect in its interpretation of the pertinent statute, and that the right to a preferential renewal lease remains an alternative to the 2-year extension offered by the State Office when the unit agreement was terminated. For reasons set out below, we find that Texaco, is distinguishable from the case on appeal and that its reasoning is not controlling here.

As we have noted, while the Land Office relied upon Texaco, Inc., supra, as authority for its refusal to renew lease LC-049945(d), Texaco dealt with a different factual situation. There the 20-year lease had been committed to a unit plan and remained committed to that plan at the end of its 20-year term. Here, although the lease had been committed to a unit during its second 10-year renewal, it had been eliminated from the unit shortly after the beginning of its tenth year and was not committed to a unit upon the expiration of the 10-year term.

In another case, H. Leslie Parker, 62 I.D. 88 (1955), discussed at length in Texaco, the Department considered another situation more analogous to that in the case on appeal. There a 20-year lease had been committed to and deleted from a unit agreement within its first term. It then had obtained production prior to the expiration of its term and continued to be a producing lease thereafter. The lessee having failed to request a renewal, the existence of the lease turned upon whether it had been extended by the last sentence of section 17(b) of the Mineral Leasing Act, as amended, now 30 U.S.C. § 226(j), which, as we have seen, provides:

> * * * Any lease which shall be eliminated from any approved or prescribed plan, or from any communitization or drilling agreement authorized by this section * * * shall continue in force for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

The Department held that the lease, having been eliminated from a unit, was entitled to the benefit provided by the cited provision and therefore remained in effect. The decision stated:

> The prior law contained no provisions relating to the extension of leases which are in effect when a unit plan terminates. The rights the appellants had under the law prior to its amendment in 1946 were to have their lease run to the end of its 20-year term and then by a proper application to have it renewed for a 10-year term. Section 17(b) added the right to have the lease run for no less than 2 years from the termination of the unit agreement and so long thereafter as oil or gas is produced in paying quantities. Plainly section 17(b) did not affect the right of the appellants to have their original lease run for its term of 20 years. <u>Nor did it alter in any way the appellants' right to renew their lease</u>. Its effect is simply that if the appellants took no action under their right of renewal, this provision of section 17(b) extended their lease so long as oil and gas is produced in paying quantities. At 95. (Emphasis added.)
>
> * * * * * * *
>
> These * * * alternatives were open to appellants - either a 10-year renewal or the continuation in effect of the old lease for the remainder of the original term and so long thereafter as oil or gas is produced in paying quantities. At 97.

The crucial difference between <u>Texaco</u> and <u>Parker</u> lies in their differing situations at the time the 20-year term expired. <u>Texaco</u> recognized that <u>Parker</u> was not controlled by the same provision of sec. 226(j) as <u>Texaco</u> was and that the proviso of the 1935 Act which it held controlled the interpretation of that provision of 226(j) did not apply to the pertinent proviso in <u>Parker</u>. The latter is the same provision at issue here. In <u>Texaco</u> the lease was still in a unit agreement while in Parker it had been eliminated from one. Texaco held that the extension of a lease in a unit on the expiration of its term is governed solely by the provision of section 226(j) and that the statutory provision was a substitute for, not an option in addition to, the renewal provision of the lease.

The importance Texaco placed upon the fact that the lease remain committed to a unit at the lease expiration date is manifest. After discussing the option Parker found available to the lessee there, Texaco states:

> * * * It does not necessarily follow, however, that a similar option is available in the case of a lease which remains committed to a unit at the lease expiration date. At 200.
>
> * * * * * * *
>
> The present case, of course, differs * * *. It involves [lease] leases which remained committed to a unit agreement at their normal expiration dates, as distinguished from a lease which continued in its original term past the termination of the unit plan to which it was committed * * *. At 202.

It rephrased an earlier statute, 1/ thus:

> Twenty-year leases shall continue in force and effect in accordance with the lease terms and the law under which they were issued, except that any such lease that at the expiration of its primary term has

---

1/ Sec. 17 of the Mineral Leasing Act, as amended by the Act of August 21, 1935, 49 Stat. 676, which provided:

"Leases issued prior to the effective date of this amendatory Act shall continue in force and effect in accordance with the terms of such leases and the laws under which issued: Provided, That any such lease that has become the subject of a cooperative or unit plan of development or operation, or other plan for the conservation of the oil and gas of a single area, field or pool, which plan has the approval of the Secretary of the Department of Departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan * * *."

> become the subject to a cooperative or unit plan of development or operation, or other plan for the conservation of the oil and gas of a single area, field or pool * * * shall continue in force beyond said period of twenty-years until the termination of such plan. At 204. [First emphasis in original; second emphasis added.]

Thus, Texaco's holding is limited to 20-year leases which remain in a unit at the end of a 20 or 10-year term.

In Parker the lease was not in a unit at the time its 20-year term expired. So here the lease was not in a unit when its 10-year renewal term expired. Unless there are some consequences that flow from the Parker lease being in its first fixed term and this lease being in a renewal term, and none come to mind, the reasoning of Parker is persuasive here. 2/

We note that Parker, which reviewed the development of the law as it related to 20-year leases and unit agreements, assumed without question that the lessee was entitled to a 10-year renewal. The pertinent issue, it said, was whether the lessee could also take advantage of the provision under discussion here. It said:

> The only objection to this interpretation is that the last sentence of the fourth paragraph of section 17(b) was not intended to apply to 20-year leases because such leases are given by law a preference right to renewal for successive 10-year periods and consequently do not need the protection which is afforded by this sentence to other types of leases which are dependent upon production for continuation beyond their primary term and which might otherwise expire after elimination from a unit agreement before the lessee could conduct drilling operations on his own.

2/ Although there are no decisions defining the meaning of "original term," recent Departmental statements interpreting "primary term" indicate that its meaning is not so restrictive as Member Goss would have it. See Anne Guyer Lewis, 68 I.D. 180 (1961); Solicitor's Opinion, 67 I.D. 357 (1960); see also 43 CFR 3107.2-1 stating terms defined:

"(b) Primary term.

"`Primary term' means all periods in the life of a lease prior to its extension by reason of production of oil or gas in paying quantities."

> While the rationale for distinguishing between 20-year leases and all others in this situation may be sound, it runs contrary to the plain meaning of the words "any lease." Further there is no support in the legislative history of the 1946 act or the Department's decisions for the distinction. At 91.
>
> * * * I must conclude that the possibility that [the 1946 Act] may bestow an unintended benefit upon 20 year leases is not sufficient to justify a finding that Congress intended to make a distinction in the one instance. At 93.

If we were to deny appellant its preferential right to renewal, we would be converting what was at first construed as a benefit conferred upon it to an exclusive method of continuing a lease once it had become part of a unit. We find nothing in the law to warrant such a conclusion.

We also note that there are two aspects to the situation presented by the appeal which throw some light on it. One is how a lease is affected by being placed during its fixed term in a situation which could gain it an extension if the situation were to continue until the end of the term, but does not, so that at the end of the term the lease is not eligible for extension for that reason. For example, a lease can attain and lose producing status during its fixed term. Such a lease remains in the same status as though production had not been attained. See Solicitor's Opinion, M-36543 (January 23, 1959).

So here the fact that the lease was in a unit during a 10-year renewal does not preclude its being treated as a lease for a fixed term if it is not in the unit when the term expires.

The other aspect of the problem is that a lease may be in a position where two extension provisions are applicable and a determination must be made as to whether both or only one of the options may be exercised. Various situations in which more than one extension provision were applicable to a lease were set out in Seaboard Oil Co., 64 I.D. 405, 410, 411 (1957) 3/ and in Texaco, supra, at 201. The conclusion to be drawn from them is that leases which are subject to extension by reason of production or being in a unit at the end of their fixed terms are governed solely by the provision relating to production and unit agreement, Pan American Petroleum Corp., A-28832 (June 27, 1962). In other words they may not avail themselves of alternate provisions for extension.

For leases in other than those situations, the lessee may make a choice. In Union Oil Company of California, 72 I.D. 217 (1965), the Department considered a 5-year year lease in its original term which had been partially committed in its fourth year to a unit agreement so that it was segregated into two leases. The lessee of the non-unitized lease applied for a 5-year extension,

---

3/ "In addition to the 5-year extension, the 1946 act provided for a number of other extensions. Extensions were provided in cases of payment of compensatory royalty (sec. 17, 5th par.), subsurface storage (sec. 17(b), 6th par.), segregation of leases by partial assignments (sec. 30(a); 30 U.S.C., 1952 ed., sec. 187a), and, of course, unitzation. The 1946 act, however, did not correlate the various extension provisions. It did not say, in the event two or more extension provisions were applicable, which one should control. The answer, therefore, is a matter of statutory construction based upon what seemingly was the Congressional intent. Thus, as we have seen it appears quite plain that the 5-year extension provision does not apply to producing leases. On the other hand, in the case of a partial assignment of a lease as to land not on a producing structure, where the assigned lease is entitled to a 2-year extension following a discovery on the retained portion of the lease, which extension would carry the assigned lease past its primary term, there seems to be no reason why the holder of the assigned lease may not elect to take the 5-year extension at the end of the primary term instead of the 2-year extension. It has so been held by the Director of the Bureau of Land Management. Stanolind Oil and Gas Company et al., BLM-A 013349, etc. (April 30, 1956); Clinch Drilling Company, BLM-A 013337, etc. (November 16, 1956)." Some of these provisons for extension were eliminated by section 4 of the Act of September 2, 1960, 74 Stat. 781, amending the Mineral Leasing Act, except as to leases issued prior to September 2, 1960. The regulations governing continuation, extension and renewal are now found at 43 CFR Subpart 3107.

which was granted. For various reasons not material here, the lessee later contended that the lease had been extended by another provision of the Mineral Leasing Act providing that a segregated non-unitized lease was continued in force and effect "for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil and gas is produced in paying quantities." 4/ This provision would have continued the lease past the end of its 5-year term. The Department discussed whether a lessee had an election between the two provisions. It stated:

> * * * [I]t is first necessary to decide whether or not the lessee in this case was entitled to make the election to have the lease extended under the provisions of section 17 for 5 years rather than for the shorter extension provided under section 17(b). This has not been decided before. However, the question as to whether the unitized portion of a lease may be granted a 5-year extension under section 17, or whether it is subject to those extensions applicable to leases while they are committed to units and when they are excluded from units, has been considered in a Departmental decision, Seaboard Oil Company, 64 I.D. 405 (1957). In that decision a review was made of the pertinent statutes and it was concluded that Congress intended the 5-year extension to apply only in those cases where a lease could not be extended because of production. It was held that, because a lease committed to a unit would be extended when there was production within the unit, the placing of a lease in a producing unit gave it a producing status and therefore the 5-year extension which was intended for non-producing leases was not available.
>
> As to the nonunitized portion of a lease which had been segregated by the unitization of another portion of the leased lands, its status as a non-producing lease is not changed unless or until actual production is attained on the segregated nonunitized land in that lease. The reasons for holding that the 5-year extension does not apply to the unitized portion of the lease, therefore, do not apply to the nonunitized portion. Although the legislative history of the 1954 act

---

4/ Section 17(b) of the Mineral Leasing Act, as amended, by the Act of July 29, 1954, 68 Stat. 585, now found in fourth paragraph, 30 U.S.C. § 226(j) (1970).

> sheds little information or light on the reasons for providing the 2-year extension for the nonunitized portion upon the segregation of a lease by unitization of part of the lands therein, it does generally show an intent to ameliorate hardships and difficulties then obtaining under the Mineral Leasing Act and to provide opportunity for a lessee for lands outside the unit plan to drill so that if oil or gas is discovered in paying quantities the lease can be continued indefinitely so long as there is production. See the reports on S. 2380, the bill which became the 1954 act, H. Rept. No. 2238 and S. Rept. 1609, both 83d Cong., 2d Sess. Upon the segregation of the lease, the nonunitized portion was entitled to be continued from that time for the entire term of the lease and the extension was intended to be applicable to all leases "whether in their primary term or secondary term or of whatever nature." See Solicitor's Opinion, 63 I.D. 246, 247 (1956). Thus, since at the end of the primary term of the nonunitized lease a lessee would be entitled to 5-year extension if he applied for it timely, it would not appear to be consistent with the manifested intent of Congress to hold that the lessee could not elect to choose the extension for the longer term of years rather than that provided in section 17(b) which could be no longer than 2 years. Indeed, such a holding would be harsh and would deny a lessee rights provided under the lease statutes, and regulations. Such an interpretation will not be made. Cf. Ann Guyer Lewis, et al., 68 I.D. 180 (1961). We must conclude, in the absence of any apparent reasons for denying a lessee such an election, that the lessee in this case was entitled to make the election which it made.

Thus after careful consideration the Department held again that in the absence of a strong reason, a lessee can choose between two provisions extending or continuing his lease.

As we have seen, Parker, held that a 20-year lease also had an option to choose between two provisions, one granting it a 10-year renewal and the other a continuation so long as oil or gas was produced in paying quantities.

In applying the cited cases to the facts of this appeal, we can find no reason in the statute, regulations or in policy to deny the appellants a similar choice.

Accordingly, we conclude that appellant, too, had an option to choose either a 10-year renewal or the two-year continuation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Land Office is reversed and the case is remanded for further proceedings consistent herewith.

Martin Ritvo, Member

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member

Joan B. Thompson, Member

Mr. Frishberg, concurring specially.

I concur in the holding of the majority. However, I agree with Mr. Henriques that the effect of our decision herein and H. Leslie Parker, 62 I.D. 88 (1955), is irreconcilably disproportionate with that of Texaco, Inc., 76 I.D. 196 (1969), Martin Yates III, 7 IBLA 261 (1972), and Anne Burnett Tandy, 7 IBLA 356 (1972). Accordingly, and because I doubt that the Congress intended to encourage unitization by imposing penalties on membership therein, I would overrule Texaco, supra, Yates III, supra, and Tandy, supra.

Newton Frishberg, Chairman

Mr. Henriques, dissenting:

The majority opinion in this case finds reconcilable both Texaco, Inc., 76 I.D. 196 (1969), and H. Leslie Parker, 62 I.D. 88 (1955). As a conceptual matter I have no difficulty in perceiving the differentiation that the majority opinion makes, but as a matter of statutory construction I find the attempted duality of approach untenable. It seems clear to me that either Texaco, supra, or Parker, supra, must be reversed. The attempt to save both precedents merely engrafts on the law an interpretation of the statute resulting in an arbitrary variance of rights that has no basis in the language of the Act.

The majority opinion notes that the statutory language at issue was first added by the Act of August 8, 1946, 60 Stat. 951. This is correct as regards the language referring to leases eliminated from a unitization agreement, which was the language that was the subject of the Parker case. The language interpreted by the Texaco opinion, however, was first enacted by the Act of July 3, 1930, 46 Stat. 1007, as follows:

> * * * Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods: Provided, That any lease heretofore or hereafter issued under this Act that has become the subject of a cooperative or unit plan of development or operation of a single oil or gas pool, which plan has the approval of the Secretary of the Interior as necessary or convenient in the public interest, shall continue in force beyond said period of 20 years until the termination of such plan: And provided further, That the Secretary of the Interior shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance. * * *

This language was reenacted without substantial change in the Act of March 4, 1931, 46 Stat. 1523, and the Act of August 21, 1935, 49 Stat. 676. As enacted in section 5 of the Act of August 8, 1946, 60 Stat. 951, the section reads, in relevant part, as follows:

> Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has

> become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. * * * Any lease which shall be eliminated from any such approved or prescribed plan, or from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

Parker, supra, was the first case to deal with either of these sections. In that case appellants had obtained a 20-year lease, with a preference right of renewal "for successive periods of ten years, upon such reasonable terms and conditions as may be prescribed by lessor, unless otherwise provided by law at the expiration of such periods," effective on January 26, 1931. On December 29, 1939, the Acting Secretary of the Interior approved a unit agreement which included the appellants' lease. This unit was superseded on December 29, 1945, by another unit agreement. Drilling under this latter unit agreement proved unsuccessful and the unit was terminated effective February 18, 1947. Thereafter, a private drilling arrangement was entered into and the lease was restored to production in 1949. The appellants in Parker did not seek to renew their lease, the expiration date of which was January 25, 1951, and subsequently the question arose whether the provisions of section 17(b) as amended by section 5 of the Act of August 8, 1946, supra, would allow appellants to hold their lease by production. The concern in Parker was not whether any renewal was possible, but whether the provisions of the Act of August 8, 1946, were applicable without an express election as provided by section 15 of the Act, and whether the Act made it possible to hold a 20-year lease by production. To both of these questions Parker answered in the affirmative. The whole focus of Parker was predicated on an assumption that the appellants could have renewed their lease. Thus, Parker declared:

> Plainly section 17(b) did not affect the right of the appellants to have their original lease run for its term of 20 years. Nor did it alter in any way appellants' right to renew their lease. Its effect is simply that if the appellants took no action under their right of renewal, this provision of section 17(b) extended their lease so long as oil and gas is produced in paying quantities. (Emphasis added.)

It should be noted that the section 17(b) referred to embraced both the provision applied in Parker and that which was utilized in Texaco.

The Texaco case is of more recent vintage. In Texaco the Assistant Solicitor reversed the Office of Appeals and Hearings, Bureau of Land Management, and held that no renewal was available for a 20-year lease which was committed to a unit at its expiration date. He found that such leases were made coterminous with the unit. He relied for this holding on the language of the Act to the effect that:

> Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. (Emphasis added.)

This, the Texaco opinion held, was the exclusive method of continuing the lease. See also Martin Yates III, 7 IBLA 261 (1972); Anne Burnett Tandy, 7 IBLA 356 (1972).

The Texaco opinion attempted to avoid the Parker precedent by noting that Parker was a different fact situation. I agree. But the Texaco decision made the same error implicit in the majority's decision in the case at bar: it assumed that since a factual differentiation can be made, varying statutory interpretations were intended by the Congress.

This is made abundantly clear if one compares the language of the two provisions. Thus, Texaco found that the following language is exclusive over all other provisions for renewal:

> Any lease * * * that has become the subject of a cooperative or unit plan of development * * * shall continue in force until the termination of such plan. (Emphasis added.)

Parker, on the other hand, found the following language permissive of a choice in seeking extension of a lease:

> * * * Any lease which shall be eliminated from any approved or prescribed plan, or from any communitization or drilling agreement authorized by this section * * * shall continue in force for the original term thereof, but for not less than two years, and so long thereafter as oil and gas is produced in paying quantities. (Emphasis added.)

With all deference to the majority I cannot see any substantive difference between these two sections. If one is exclusive, both should be exclusive; if one allows a choice, both should be so construed.

The majority, in effect, supports the Parker rationale. The opinion states: "If we were to deny appellant its preferential right to renewal, we would be converting what was at first construed as a benefit conferred upon it to an exclusive method of continuing a lease once it had become part of a unit. We find nothing in the law to warrant such a conclusion." This sentiment is applicable as well to the Texaco situation.

It is true, of course, that this Board has reaffirmed Texaco in two recent cases. See Martin Yates III, supra; Anne Burnett Tandy, supra. It should be no secret, however, that this case has led to a thoroughgoing reexamination of the Texaco doctrine. If the majority is to reaffirm Parker, they should likewise be willing to give Texaco and its derivatives, Yates and Tandy, a clean death. This the majority does not do. Rather, a system is constructed in which substantive rights depend on the vagaries of the calendar. If the lease is excluded from the unit one day before its term expires, a 10-year renewal may be sought; if the lease is not excluded from the unit until one day after its fixed term expires, it has lost this right to a renewal. It is doubtful that Congress could have intended so disproportionate a result. Certainly this Board should be reluctant to ascribe such an intent to Congress without a clear-cut statutory mandate. Such is not shown here. I cannot assent to a decision which perpetuates such an approach. Accordingly, I respectfully dissent.

Douglas E. Henriques, Member

I concur:

Edward W. Stuebing, Member

Mr. Goss, dissenting:

I concur in the dissent of Member Henriques. I feel certain that Congress would not have intended to make it attractive, for one whose lease term was about to expire, to obtain either a release from a unit or the dissolution of the unit in order to obtain a further renewal of his lease.

In the 1946 amendments, 60 Stat. 951, Congress indicated its disillusionment with 20-year renewable leases, presumably in part because the leases tended to permit valuable minerals to be tied up without requiring exploration and production. In section 17 of the Mineral Leasing Act [30 U.S.C. § 226(j) (1970)] Congress clearly stated that a lease eliminated from a unit will continue for "the original term thereof." Section 17 provides in part:

> * * * Any lease which shall be eliminated from any such [unit] * * * plan, * * * shall continue in effect <u>for the original term thereof</u>, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities. (Emphasis added.)

"Original term" has been construed as referring to the first fixed period - here the 20 years commencing December 29, 1938, but extended by approved relief through December 28, 1959. Solicitor's Opinions, 60 I.D. 408 (1950) and 63 I.D. 246, 249 (1956). The words "original" and "term" must be construed to have been used for a purpose. If it were held that even without these words the leases still continue, after elimination from a unit, for not less than <u>any</u> unexpired term, then the entire phrase regarding "original term" is surplusage.

If we were to hold, contrary to the 1950 and 1956 Opinions, <u>supra</u>, that "original term" refers to the entire term, including renewal terms, then the holding would not be in accord with the ordinary use of the term "original." Further, the word "original" would be surplusage in that it would add nothing and would actually confuse the meaning of the word "term." It is doubted that Congress would have intended to be so imprecise.

We are required, if possible, to give effect to each precise word of the statute, and we are not permitted to ignore a whole phrase. <u>United States</u> v. <u>Menasche</u>, 348 U.S. 528, 538-39 (1944). This rule is more fully discussed by the Colorado Supreme Court in <u>Saxton</u> v. <u>Perry</u>, 47 Colo. 263, 107 P. 281 (1910). To apply the logic of <u>Saxton</u> to the facts of this case:

> This language is so plain and clear that it needs no construction. It contains no exception. It says the [lease will continue for its original term but for not less than two years and so long thereafter as oil or gas is produced in paying quantities] * * *. If it were intended that, in [any] case the [lease would continue for the renewal term thereof] * * *, the statute would have said so. * * * To hold otherwise would be in effect to repeal the statute, and that is not a function of the [Board of Land Appeals] * * *. It is the province of the [Board] * * * to uphold statutes wherever possible, and give them effect and meaning according to their plain terms. (Emphasis added.)

It is not our function to evaluate Congressional policy. All renewals of Government oil and gas leases are voluntary and are subject to the provisions of law at the time of the renewal. 1/ There are no leases which are in a 10-year renewal period 2/ which have not voluntarily been renewed after 1946, when the present requirements of Section 17 were amended into the Mineral Leasing Act. Therefore, even if a lessee were to be forced into a unit and involuntarily removed from the unit prior to expiration of its renewal term, all pursuant to law, that lessee would be held to

---

1/ The terms of an appellant's renewal lease specifically provide that it was granted:

"* * * for a period of 10 years * * *. With preferential right in lessee to renew this lease for successive periods of 10 years, upon such reasonable terms and conditions as may be prescribed by lessor, unless otherwise provided by law at expiration of such periods." (Emphasis added.)

In addition, the renewal lease contains the usual provision that every provision of the lease, including its 10-year term, is:

"* * * subject to the terms and provisions of the act of February 25, 1920 (41 Stat. 437, 30 U.S.C. sec. 81 et seq.), as amended, hereinafter referred to as the act * * * which are made a part hereof * * *."

2/ Apparently it has been the custom to renew 20-year leases by issuing a new lease, rather than by making an addition to the original lease. Any such extension lease--issued pursuant to the former statute authorizing 20-year leases, Mineral Leasing Act of February 25, 1920, 41 Stat. 443, as amended--is not itself in an original term regardless of what lease form is used. The validity of such a lease depends upon its character as a renewal of a lease validly issued under the former statute.

have consented, when it signed the renewal lease, to the possibility of having its renewal term foreshortened or its right to renew cut off under section 17.

If the language in section 226(j), paragraph 4, "shall continue in force until the termination of the plan" is exclusive of any right to renew as Texaco held, then the language in the same paragraph as to continuation "for the original term" is also exclusive of any right to renew.

For the reasons stated in Martin Yates III, 7 IBLA 261 (1972), I feel that the Board should continue to follow the interpretation of the California Supreme Court in Dougherty v. California Kettleman Oil Royalties, 9 Cal. 2d 58, 69 P.2d 155 (1957); Anne Burnett Tandy, 7 IBLA 356 (1972); Yates, supra; Texaco, Inc., 76 I.D. 196 (1969), and the Solicitors' Opinions of 1956 and 1950, supra. These opinions are in accord with Departmental instructions as to Unit Operation of Oil and Gas Permits and Leases under Act of March 4, 1931, 53 I.D. 386, 391 (1931), that unitized leases "automatically" continue beyond their original 20-year period until termination of the plan. Established precedents should not be overruled in reliance solely upon the dicta in Parker, a 1955 decision.

Appellants' lease, after elimination from the unit, being in a renewed term rather than its original term, would continue for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

Joseph W. Goss, Member